IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 5TH DECEMBER 2007 / 14TH AGRAHAYANA 1929

WP(C).No. 35979 of 2007(G)

IA 579/07 in OS.32/2006 of MUNSIFF COURT, PAYYOLI
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PETITIONER:

KANNOTH MANIYAN ADIYODI,
S/O OMANA AMMA, AGED 46 YEARS AT PRESENT
EMPLOYED AT ABUDHABI, UAE, REPRESENTED BY HIS
POWER OF ATTORNEY HOLDER M.K.RAGHAVAN,
AGED 64 YEARS, NARAYANAN NAIR, MANCHILIKKANDI
MELADI AMSOM, KIZHUR DESOM OF KOYILANDI TALUK.

BY ADV. SRI.P.S.SREEDHARAN PILLAI
SMT.C.G.PREETHA
SMT.P.RANI DIOTHIMA

RESPONDENTS:
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1. THE DEITY OF SREE KISHUR SIVA TEMPLE,
REPRESENTED BY ITS NEXT FRIEND N.VENUGOPALAN,
S/O SANKARAN ADIYODI, KILUR P.O.,
PAYYOLI VIA., KOYILANDY TALUK.

2. SREE KIZHUR SIVA TEMPLE, REPRESENTED BY
N.VENUGOPALAN, THE CHAIRMAN, BOARD OF TRUSTEES,
KILUR P.O., PAYYOLI VIA., KOYILANDY TALUK.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 05/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.Krishnan, J.

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W.P(C).No.35979 of 2007

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Dated this the 5th day of December, 2007.

JUDGMENT

This Writ Petition is preferred against the order of the Munsiff, Payyoli in I.A.No.579 of 2007 in O.S.No.32 of 2006. A perusal of the order of the learned Munsiff would reveal that the plaintiffs claim exclusive right and title over Sy.No.125/1 and Sy.No.125/2 whereas the defendant would contend that the entire Sy.No.125/2 belongs to him and the plaintiffs have no title or possession over the property. So, if one is able to establish or the plaintiffs fail to establish that they have got title over Sy.No.125/2 naturally the suit is to be dismissed. So it is not a boundary dispute or a dispute with regard to the identity of the property, but it is a dispute with respect to the title to the property.

2. Therefore, I think a remission of the Commissioner's plan and report may not be strictly necessary. But I permit the writ

petitioner to adduce evidence showing the incorrectness or inadequacy of the Commissioner's report and if the court feels that the materials are not sufficient enough at the time of giving proper decision on the matter, the court may call for the additional particulars from the Commissioner and dispose of the matter in accordance with law.

Writ Petition is disposed of accordingly.

M.N.Krishnan,
Judge.

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